

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ROBERT E. COTNER,)	
)	
Plaintiff,)	
vs)	NO. CIV-14-0269-HE
)	
VICKI MILES-LAGRANGE, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Robert E. Cotner, a state prisoner appearing *pro se*, filed this action pursuant to 42 U.S.C. § 1983 alleging various violations of his constitutional rights. Consistent with 28 U.S.C. § 636(b)(1)(B) & (C), the matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell, who has recommended that plaintiff's amended complaint be dismissed because plaintiff has three or more "strikes" within the meaning of 28 U.S.C. § 1915(g), and has not made a specific credible allegation that he is under imminent danger of serious physical harm. As petitioner objected to the Report and Recommendation, the court has conducted a de novo review of the magistrate judge's determination.

After a careful review, the court agrees with the Report and Recommendation. As the magistrate judge noted, plaintiff is "another of the prodigious *pro se* filers who regularly inundate [the Tenth Circuit] and the district court with repetitive and largely frivolous filings." [Doc. #9, pg. 2] (quoting Cotner v. State of Okla. ex rel County of Creek, 74 F.3d 1248 (Table), 1996 WL 6602, *1 (10th Cir. 1996)). Plaintiff "is subject to filing restrictions in this court, in the Tenth Circuit Court of Appeals, in the Supreme Court," and the Oklahoma Court of Criminal Appeals. *Id.* at 3. Because plaintiff is subject to filing

restrictions, he must either pay the court filing fee or make a specific credible allegation that he is under imminent danger of serious physical harm. 28 U.S.C. § 1915(g).

Plaintiff has done neither. Instead, he objects to treatment by this and other courts in imposing “three strikes” status on him without formal hearings, argues that filing restrictions constitute double jeopardy, and offers other similar objections. He appears to suggest that prison overcrowding has forced him to live in cells with too many prisoners, and that these conditions have somehow left him permanently disabled. Such allegations are insufficient to suggest serious danger of imminent physical harm. Because plaintiff has failed to satisfy 28 U.S.C. § 1915(g), and has not otherwise paid the filing fee, his complaint will be dismissed.

The magistrate judge further recommended that “because of the scurrilous and false allegations contained in the Complaint against members of the judiciary . . . and because Plaintiff continues to repeatedly file frivolous actions . . . the Court consider the imposition of sanctions against the Plaintiff, including dismissal of the action with prejudice . . .” [Doc. #9, pg. 4]. The court agrees that the frivolous nature of plaintiff’s complaint and repeated abuse of this court warrant sanctions, and the complaint will be dismissed with prejudice on that alternate ground as well.


Subsequent to the filing of his complaint and consistent with his past practice, plaintiff filed various motions and notices, including an “Emergency Motion to Judge Timothy D. DeGuisti for Non-Pro-Tunc (sic),” a “Petition to Judge Hearrington (sic) For Speedy Trial,” an “Emergency Motion For an Appointment of Counsel,” a “Motion to Transfer this Case

to the Washington, D.C. Federal Claims Court,” and a “Motion for Magistrate Purcell to Produce Evidence.” [Doc. Nos. 10-12, 14, & 15 respectively]. None of these attempt to make the necessary showing in light of plaintiff’s “three strikes” status and, for a variety of reasons, fail to state a claim or otherwise show a basis for relief from this court.

After de novo review, the court **ADOPTS** the Report and Recommendation [Doc. #9]. Plaintiff’s motion [Doc. #2] is **DISMISSED WITH PREJUDICE**. Plaintiff’s “Motion to “Emergency Motion to Judge Timothy D. DeGuisti for Non-Pro-Tunc (sic),” “Petition to Judge Harrington (sic) For Speedy Trial,” “Emergency Motion For an Appointment of Counsel,” “Motion to Transfer this Case to the Washington, D.C. Federal Claims Court,” and “Motion for Magistrate Purcell to Produce Evidence,” [Doc. Nos. 10-12, 14, & 15] are **DENIED**.

IT IS SO ORDERED.

Dated this 12th day of May, 2014.



JOE HEATON
UNITED STATES DISTRICT JUDGE